July 28, 2000

Ms. Susan K. Steeg
General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR2000-2847

Dear Ms. Steeg:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 137489.

The Texas Department of Health (the "department") received two requests, from the same requestor, for materials concerning the department's youth violence study. You have provided some of the responsive information to the requestor but in de-identified form. You claim that the identifying information which you redacted from the documents the department released is excepted from disclosure under section 552.101 of the Government Code. In addition, you claim that additional responsive information, audiotapes of interviews and transcriptions of those audiotapes, are also excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information, some of which constitutes a representative sample of similar information at issue.[1]

[1]The submitted information includes two audiotapes and transcriptions of three tape recorded interviews. You have also submitted a representative sample of signed consent forms which represent the documents that the department has released in de-identified form. The remainder of the submitted documents, the "Memorandum of Understanding" and the "Youth Violence Inquiry" have been released to the requestor in their entirety and are therefore not at issue here. We assume that the "representative samples" of records submitted to this office are truly representative of all of the types of information at issue. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than those submitted to this office.

Section 552.101 excepts from required public disclosure "information that is confidential by law, either constitutional, statutory, or by judicial decision." Under common law privacy, private facts about an individual are excepted from disclosure. *Industrial Foundation v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. However, common law privacy does not apply to embarrassing or intimate information "unless the records [at issue] are also of no legitimate interest to the public." Open Records Decision No. 470 at 4 (1987); *see also* Open Records Decision No. 464 (1987).

Section 552.101 also incorporates the constitutional right to privacy. The United States Constitution protects two kinds of individual privacy interests. The first interest is an individual's interest in independently making certain important personal decisions about matters that the United States Supreme Court has stated are within the "zones of privacy," as described in *Roe v. Wade*, 410 U.S. 113 (1976) and *Paul v. Davis*, 424 U.S. 693 (1976). The "zones of privacy" implicated in the individual's interest in independently making certain kinds of decisions include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. The second individual privacy interest involves matters that are outside the zones of privacy but that nevertheless implicate an "individual's interest in non-disclosure or confidentiality." Open Records Decision No. 455 at 4 (1987) (*quoting Fadjo v. Coon,* 633 F.2d 1172, 1175 (5th Cir. 1981). To determine whether a given situation triggers the constitutional right to privacy, this office applies a balancing test, weighing the individual's interest in privacy against the pubic right to know the information. *See* Open Records Decision No. 455 at 5 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490, 492 (5th Cir. 1985)).

You explain that at least part of the department's youth violence study entails in-depth interviews with youths who committed violent crimes when they were minors and who are currently incarcerated in the Giddings State School, a facility of the Texas Youth Commission.[2] The interviews cover sensitive material such as abuse the interviewees suffered while growing up, sometimes including sexual abuse, as well as detailed accounts

[2]You also explain and the submitted consent forms show that while not all of the interviewees consented to the release of their identities, all of the interviewees volunteered to be interviewed, understood the purpose of the interview, understood that they had the option of refusing to answer any question, and consented to the release of "reports, stories, interviews, or picture(s) resulting from said interview and or filming."

of various crimes the interviewees committed. Therefore, the submitted audiotapes and transcriptions contain information that is highly intimate and embarrassing.

On the other hand, we cannot deny the significant and legitimate public interest in the taped and transcribed interviews. You explain that the interviews "will be added to other data collected by [the department] and will be used to address the root causes of youth violence and address principles of prevention." There is certainly a legitimate public interest in this topic. Furthermore, as the requestor correctly points out, there is also a substantial and legitimate public interest in how the department conducts the interviews that are part of its study. However, we note that neither of these legitimate public interests are served by the public release of the interviewees' identities.

Therefore, we find that common law and constitutional privacy require the department to withhold information identifying the interviewees. As the tapes reveal the interviewees' voices, the tapes must be withheld in their entirety under common law privacy. However, common law and constitutional privacy do not protect the substance of the interviews. Therefore, while the department must withhold information contained in the transcriptions which identifies or tends to identify the interviewees under section 552.101, the department may not withhold the remaining content of the transcriptions. Applying this same reasoning to the submitted consent forms, we agree with the department's redactions. In other words, the department must withhold the identifying information on the consent forms under section 552.101, but it may not withhold the remaining content of the consent forms.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the

governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJF\ljp

Ref: ID# 137489

Encl: Submitted documents

cc: Ms. Polly Ross Hughes
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(w/o enclosures)